UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.427
19 May 2000

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 427th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 May 2000, at 3 p.m.

Chairman: Mr. Burns

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of the United States of America (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.427/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.00-42145 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of the United States of America (CAT/C/28/Add.5) (continued)

1. At the invitation of the Chairman, Mr. Koh and Mr. Yeomans (United States of America) took places at the Committee table.

2. The CHAIRMAN invited the United States delegation to present its replies to questions raised by members of the Committee.

3. Mr. KOH (United States of America), explaining why the report had been delayed, said the task of assembling a comprehensive report for a country of 267 million people required extraordinary coordination among many agencies and governmental bodies. The report dealt with the national Government, the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Northern Marianas and American Samoa, as well as the activities of the Departments of State, Justice, Defense, Labor, Health and Human Services, the Bureau of Prisons, and the Immigration and Naturalization Service, among others. Input had also been sought from non-governmental organizations (NGOs) and concerned individuals. President Clinton had, in fact, promulgated an executive order in 1998 expressly to create an inter-agency working group to foster better coordination of that process. The report had been completed not long after the creation of the inter-agency group; his Government expected that future reports would be more expeditiously produced.

4. Mr. YEOMANS (United States of America) said that medical attention was routinely provided to any person in need of it at the time of arrest, including access to a physician if warranted, a right guaranteed under the due process clauses of the Fifth and Fourteenth Amendments to the Constitution. In addition, judicial interpretation of the Eighth Amendment provided that judicial officers could not exhibit "deliberate indifference" to the serious needs of a convicted prisoner, by either denying or delaying access to medical care or interfering with treatment. All pre-trial detainees also had the right, under the First and Fourth Amendments, to communicate with friends, relatives, attorneys and public officials by means of visits, correspondence and telephone calls, subject to reasonable limitations imposed by security needs. The Fifth and Sixth Amendments also gave pre-trial detainees the right to contact a lawyer.

5. Under the federal system, the Federal Bureau of Investigation observed a strict policy of having parents present whenever interviewing juveniles.

6. The United States Government believed there was no inconsistency between its understanding of the definition of torture and that contained in article 1 of the Convention. Where official mistreatment resulted solely in mental suffering, it did constitute torture provided it involved prolonged mental harm and was caused by or resulted from four sources: intentional or threatened infliction of severe physical pain or suffering; the administration or threatened administration of mind-altering substances or other procedures calculated to disrupt the senses or the personality; the imminent threat of death; or the imminent threat that another person would

be subjected to death, severe physical pain or suffering or the administration of mind-altering substances or other procedures calculated to disrupt the senses or the personality. That understanding did not modify the meaning of article 1, but rather clarified it, adding the precision required by the United States domestic law.

7. As paragraphs 72 to 93 of the report explained, it would be difficult for the United States to maintain a single comprehensive collation of statistics on torture because criminal justice authority was widely diffused between the federal Government, the 50 States and the various territories. However, to address the lack of reliable information on incidents of the use of excessive force by police, in 1994 Congress had mandated the Attorney-General to collect data and to produce a yearly report; he had in turn requested the Department of Justice and the National Institute of Justice to issue periodic reports on police use of force. Other sources of statistical information included the annual report on crime of the Federal Bureau of Investigation, which was based on a survey of 16,000 law enforcement agencies throughout the country; the national crime victimization survey of the Department of Justice; and the annual report of the Parole Commission. In addition, each State had its own crime reporting and criminal justice information center or records bureau. Further information could be obtained from the National Center for State Courts, the Census Bureau, and the Bureau of Justice Statistics. The Government would assess the feasibility of merging those databases into a single set of statistics on torture.

8. Mr. KOH (United States of America) said that the United States declaration that certain articles of the Convention were non-self-executing simply established how those articles would be implemented in domestic law and did not limit United States obligations. The Convention could not, in and of itself, provide a private cause of action in United States courts. Nothing in the Convention required States parties to make it self-executing under their domestic law; indeed, articles 2 and 4 left it to States parties to determine how best to implement their obligations. The question was not whether the Convention was self-executing, but whether the provisions of the Convention were fully guaranteed by the domestic law.

9. As to why the United States applied the notion of "more likely than not" to its interpretation of article 3, at the time of its ratification of the Convention against Torture the domestic law had provided that a person could not be expelled or returned to a State where his life or freedom would be threatened on a number of discriminatory grounds, a provision derived from article 33 of the Convention relating to the Status of Refugees. The Supreme Court had interpreted that provision as meaning that a person could not be deported to a country where it was "more likely than not" that he would be persecuted. Since the Convention against Torture extended the prohibition on deportation to all cases of torture, even those not involving persecution, the "more likely than not" understanding ensured that protection under article 3 would be applied in a manner consistent with existing law. The Chairman had suggested that, by analogy to common law on tort, the issue should be whether there was a "real risk" of torture, which might be less than a probability. But the evidentiary standard for proving a common law tort was also "more likely than not".

10. As to how the United States addressed questions of command and control, the Convention as the United States construed it clearly applied to torture committed in the context of governmental authority, and excluded torture as a private act.

11. The United States had criminal jurisdiction over the crime of torture committed abroad by any official, irrespective of nationality, if the perpetrator was later found in the country. The United States Code provided that if a person committed or attempted to commit torture, he was punishable by imprisonment for not more than 20 years, and that if death resulted he was punishable by death or by imprisonment for any term of years or life, whether he was a national of the United States, or present in the United States regardless of his nationality or that of the victim. Since the 1980 landmark case of Filartiga v. Pena-Irala, the federal courts had heard suits brought by alien plaintiffs against alien torturers for acts of torture committed outside the United States.

12. The Government apologized to Sir Nigel Rodley, the Special Rapporteur on Torture, for its delay in replying to his communications. It fully supported his admirable work, and was pleased to report that it had completed a detailed response to his communication of November 1998, which included replies to all his earlier communications. Those replies were being transmitted to the Special Rapporteur, and would also be provided to the Committee. In addition, it was preparing a reply to the Special Rapporteur's communication of November 1999.

13. The Department of Justice had sought stringent limitations on the use of electro-shock weapons in law enforcement agencies and corrections facilities, as well as increased training for officers. Their use did not violate constitutional standards per se. Wielded appropriately, stun belts and stun guns could be effective tools when the use of force was warranted during detention or arrest, and could reduce violence and protect bystanders by serving as a non-lethal alternative to deadly force. The Bureau of Prisons maintained 51 custody control belts throughout the country, for use only: during the transport of maximum custody inmates; to prevent escape or to prevent loss of life or grievous bodily harm; if conventional restraints were insufficient during the transport of an inmate; and if the inmate had no preclusive medical condition. To date, no incident had occurred in which a custody control belt had been activated.

14. Federal criminal prosecutions were only part of United States efforts to combat police misconduct. State prosecutors were also attempting to do so through criminal prosecutions and improved oversight. Local police were working to improve accountability through training, enhanced discipline, citizen complaint procedures, and improved community communications. The Department of Justice was investigating several hundred allegations of misconduct, and had, for example, successfully prosecuted the officers involved in the beating of Rodney King, who had been acquitted in State proceedings. More than 300 law enforcement officers had been criminally prosecuted since 1993 for violations of constitutional rights. In addition, the Department of Justice brought civil suits alleging patterns of misconduct such as use of excessive force, failure to train and discipline officers adequately, and racial profiling, and was conducting investigations of police departments, including the New York Police Department's Street Crime Unit, which had been involved in the shooting of Mr. Amadou Diallo. It was also engaged in employment discrimination litigation, with a view to changing the racial and gender composition of the nation's law enforcement departments and thus improving community relations, and in promoting community-oriented policing.

15. Mr. KOH (United States of America) said that Mr. Ricardo Anderson Kohatsu had been permitted to return to Peru following a trip to the United States because the Government of Peru

had asserted a claim of immunity from arrest on his behalf on the basis of the 1975 agreement between the United States and the Organization of American States on privileges and immunities of delegations.

16. Federal legislation on torture was a historical fact; under article 1 of the Constitution, Congress had the power to punish offences against the law of nations. It had enacted the legislation establishing criminal jurisdiction over torturers present in the United States who had committed acts of torture abroad, as well as the Torture Victims Protection Act of 1992 and the Torture Victims Relief Act of 1998, which established remedies for persons tortured abroad and provided relief to victims of torture living in the United States.

17. The United States Government had never received any request for the extradition of Mr. Emmanuel Constant from the Government of Haiti or any other Government. It was aware of reports that he had committed torture in Haiti and had no wish to harbour torturers. Apparently, however, since the acts of torture allegedly committed by Mr. Constant had occurred before the enactment of the relevant law in 1994, the constitutional prohibition against the retroactive application of criminal statutes could well bar his prosecution.

18. To the best of the Government's knowledge, it had received no requests for the extradition of a person for the offence of torture since the submission of its report in October 1999.

19. As far as the Government was aware, training in recognizing the indicia of torture and in techniques for the treatment of victims was not a required part of any medical school curriculum. Medical schools did, however, offer courses in health care and human rights, which covered related matters. In addition, NGOs such as the Center for Victims of Torture, Médecins du Monde and Physicians for Human Rights assisted in providing instruction in those areas. Both the New York Medical Center and the Montefiore Medical Center in New York City had clinics for torture survivors, which taught medical students and doctors how to diagnose and treat victims. Those efforts, which the Government applauded, might be laying the groundwork for a standard curriculum.

20. Mr. YEOMANS (United States of America) said that the Supreme Court accorded juveniles the same safeguards against self-incrimination that it provided to adults. As with any statement by a witness admitted in a criminal case, an inquiry would be made into the voluntariness of a juvenile's statement, taking into account his age and maturity. As a condition for receiving federal grants or funds, States must hold juveniles involved in judicial proceedings separately from adults. States therefore generally separated juveniles from adults both in pre-trial facilities and in prison.

21. Under the federal system, juveniles were never housed with adult offenders. Although in limited circumstances they could be convicted of federal offences, they were generally placed in facilities managed by State or local agencies or private corrections firms with a view to maintaining close family ties. Only one of the federal prisons, that of Guyanabo, Puerto Rico, held juvenile offenders; they were strictly separated from adults. The Immigration and Naturalization Service also housed juveniles separately from adults, in facilities licensed at the local, State, or federal level and inspected annually to ensure their compliance with regulations.

22. Under the laws of some States, persons aged 16 and over could be sentenced to death when the nature of the crime required their being tried as adults. Such persons might sometimes be held on death row after they had been tried, convicted and sentenced to death. However, under United States law, the nature of their conduct warranted a determination that they had clearly reached the age of majority in advance of their eighteenth birthday and should therefore be tried, convicted and sentenced as adults.

23. Restraint devices were used in jails and prisons not as punishment but to keep inmates from hurting themselves or others, when less restrictive means of control had failed. They were also used in hospitals and nursing homes for patient safety reasons. Unfortunately, it had been found that certain jails and prisons were using restraint chairs and four or five-point restraint on a bed for an excessive time or when other less restrictive methods of preventing harm had not been attempted. The Department of Justice condemned that practice and had sought to remedy it. The Constitution did not permit restraint as a means of punishment or for interrogation purposes. Prior to adopting the use of restraint chairs, the Federal Bureau of Investigation had evaluated their effectiveness, and had found them to be beneficial for short-term transport. The restraint chair was not intended for routine use in prison hospital or special housing units, and must not be used in lieu of progressive or four-point restraints.

24. The Government had no knowledge of any instances in which shackles had been used on women prisoners in labour, although it was aware of the allegations made by Amnesty International. If specific, reliable information was provided, it would be eager to investigate such incidents.

25. The Government acknowledged reports that restraint chairs, improperly used, had caused deaths in health-care facilities; they might also have caused deaths in jails and prisons. It was energetically seeking full information on such incidents. In 1999, a Senate subcommittee had held hearings on that subject, and efforts were under way to improve the use of restraints in federally-funded health-care facilities.

26. It was unconstitutional to interrogate persons in restraint chairs, and the Government would take action to stop such a practice if it occurred. To its knowledge, however, restraint chairs had not been used for that purpose. Investigations had shown that some juvenile facilities were using restraint chairs. Remedial agreements drawn up with such facilities required that such devices should never be used as punishment, but only to control youths who were endangering themselves or others, when other less restrictive methods had failed. Youths held in restraint chairs must be constantly monitored, frequently checked by supervisors, and removed as soon as they had gained control of their behaviour.

27. The "supermax" prison facilities were a necessity in United States law enforcement, and their use was strictly controlled. Prisoners in such facilities were screened and monitored for mental illness, provided with opportunity for exercise, and transferred to less structured settings where appropriate. One such prison was the Administrative Maximum Security Institution (ADX) in Florence, Colorado, which contributed to safe operations in other prisons by concentrating in one facility prisoners posing very serious security and safety risks. Most inmates were transferred there from other institutions because of their dangerous behaviour, including, in particular, murder or attempted murder of another inmate; serious assaults on staff

or inmates; and escape or attempted escape. The Bureau of Prisons reserved its discretion to ensure public safety by placing inmates in the ADX. Recent domestic and international terrorism convictions had resulted in court recommendations for such placement; the Bureau considered such recommendations, but made its determinations on the basis of the criteria described. Before an inmate was committed to ADX, other high security institutions were always considered.

28. A referral for ADX designation must include a number of elements including memoranda between the warden and the appropriate Regional Director, copies of all disciplinary reports and a recent psychiatric or mental health evaluation. Inmates diagnosed as suffering from serious psychiatric illnesses were not referred for placement. Most inmates were in fact returned to the general population at penitentiaries other than ADX Florence and participated in a stratified housing programme allowing them to function in gradually less structured environments as they demonstrated more responsible behaviour. Supermax facilities operated by State correctional agencies were monitored by the Civil Rights Division of the United States Department of Justice and one such investigation had resulted in the institution of remedial measures at a Supermax facility in Maryland.

29. As to whether the United States intended to create independent complaint review mechanisms, he said that such mechanisms were unnecessary and would needlessly duplicate the work of bodies such as the Federal Bureau of Prisons and the National Institute of Corrections. State and federal courts had also engaged in extensive oversight in prisons in response to lawsuits brought by government agencies and indeed inmates.

30. Turning to the subject of the Prison Litigation Reform Act (PLRA), he said that a physical injury was a precondition for an award of monetary relief for unconstitutional conditions of confinement in a federal lawsuit filed by an inmate. However, prisoners who had suffered non-physical injuries could still sue in federal courts for injunctions requiring, for example, a smoke-free environment.

31. All prisons had prisoner grievance mechanisms. A prisoner was required to exhaust all administrative remedies before bringing his or her case to the federal court.

32. Mr. KOH (United States of America) endorsed the statement made by Mr. Camara that, in accordance with the Vienna Convention on the Law of Treaties, a State party to a treaty could not appeal to internal difficulties to excuse its failure to fulfil international obligations that it had assumed. The reference to federalism made in the United States general reservation to the Convention was not intended to exempt it from ensuring that both State and federal law complied with its obligations under the Convention. Under its federalist system of government, powers not delegated to the Government were expressly reserved for the States and people under the Tenth Amendment to the Constitution. The Government could therefore establish and enforce uniform standards for the respect of the right to be free from torture and cruel and inhuman punishment, including possible direct invalidation of any offending laws at the State level.

33. It had been argued by Mr. Camara that the only permissible reservation to the Convention was pursuant to article 28, i.e. with respect to the competence of the Committee to receive State-to-State complaints under article 20. However, the United States believed that under the Vienna Convention on the Law of Treaties and the Permanent Court of International Justice's Advisory Opinion Concerning Reservations to the Genocide Convention, a State party could attach a condition to its ratification of a multilateral treaty unless the instrument itself prohibited reservations or such a condition would defeat the object and purpose of the treaty, as viewed by the parties to the multilateral convention. The Convention Against Torture did not prohibit reservations and no State party had adopted Mr. Camara's interpretation.

34. Mr. YEOMANS (United States of America), referring to the subject of asylum-seekers, said that the Immigration and Naturalization Service (INS) tried to ensure that all aliens in detention were treated humanely. The INS was sensitive to the special circumstances of legitimate asylum-seekers and favoured the release of any alien found to have a credible fear of persecution, provided that his needs would be met following release.

35. The INS sought to house all detained asylum-seekers in INS-run facilities, separate from criminal aliens, or, where no bed space was available in an environment free from harassment by others with a history of violence. A classification system was used taking into account relevant information and, together with proper supervision and special housing, had proved effective.

36. When an asylum-seeker was released, his freedom of movement was generally not restricted, except that he was required to keep the INS informed of his whereabouts and to comply with any conditions placed on his release, such as periodic reporting to the INS. A work permit could not, however, be granted, until he was granted asylum, or until 180 days had passed without a decision being taken on the asylum application, a provision adopted in 1994 to reduce the number of bogus asylum applications.

37. Prisons operated by private companies were in no way isolated from scrutiny under the federal Constitution. State and local contracting agencies were ultimately accountable for conditions in institutions housing individuals in the State's legal custody. A number of the Civil Rights Division's cases pursued to protect the constitutional right of prisoners had involved private providers housing individuals in the custody of States or local subdivisions. In short, a corporation operating a prison facility under a contract with the State was subject to the same liabilities under federal law as a public facility.

38. Responding to a question raised by Mr. Yu Mengjia, he said that in the United States chain gangs were not unconstitutional per se. However, their use was rare and was mostly for highway clean-up and maintenance projects. In order to determine whether the particular use of a chain-gang violated the Constitution, it would be necessary to review the kind of work done by prisoners on chain gangs so as to ascertain whether the conditions complied with those required by the Eighth Amendment's protection against cruel or unusual punishment.

39. Mr. KOH (United States of America) noted that under article 16 (1) of the Convention States parties undertook to prevent acts of cruel, inhuman or degrading treatment or punishment.

Article 16 (2) further specified that the provisions of the Convention did not prejudice those of other international or domestic instruments prohibiting such treatment or punishment, or relating to extradition or expulsion. Under certain circumstances a person arriving in the United States as a child could be subject to removal many years later if he had not become a United States citizen and if, for example, he engaged in criminal activities that made him deportable. That stipulation did not violate the country's obligations assumed under either of the provisions of the article. The INS took steps to ensure that any removal process was administered in a humane fashion. In addition, an alien could seek protection from removal under both article 3 of the Convention against Torture and article 33 of the Convention relating to the Status of Refugees.

40. It had been asserted that the United States failed to identify fear of torture as a reason for not returning a person to his country of origin in light of the requirement under the Convention. In fact, the INS had adopted a comprehensive interim administrative process to assess whether article 3 of the Convention was applicable to individual cases of aliens subject to removal. If there was reason to believe that an alien would be tortured in a particular country, the INS would consider whether article 3 prohibited removal to that country. In addition, the INS worked with the Office of the United Nations High Commissioner for Refugees (UNHCR) to develop an informal process whereby that agency could bring to the Government's attention cases which it believed raised issues under article 3.

41. In that regard, President Clinton had signed into law a statute requiring the heads of appropriate agencies to prescribe regulations to implement the obligations of the United States under article 3 of the Convention Against Torture, subject to any reservations, understandings, declarations and provisos contained in the United States Senate resolution of ratification of the Convention. An interim rule prescribing such regulations had also been published by the Department of Justice.

42. Mr. YEOMANS (United States of America) said that the Anti-Terrorism and Effective Death Penalty Act did not limit the ability of federal courts to remedy erroneous decisions of the State courts. Rather, it required such cases to be brought within 12 months of any one of a number of triggering events and no more than one habeas corpus challenge to be brought in the same case. However, a federal habeas corpus action could still be maintained if a State defendant could establish that there was a new rule of constitutional law which the Supreme Court had held to apply retroactively, or that the facts on which the action was predicated could not have been discovered earlier through the exercise of due diligence and provided clear and convincing evidence of actual innocence, or that the lower court had not given adequate consideration to the initial petition for habeas corpus.

43. As to whether special medical training was provided for doctors working in prisons, first, such doctors must be licensed to practise medicine in the State in which a facility was located. In addition, all federal prison staff received initial and, thereafter, annual training in recognition of victims of sexual assault and physical abuse. Physicians and other health care providers were

also required to receive training every six months in suicide prevention. A comprehensive orientation programme, consisting of a set of learning objectives, was scheduled for immediate implementation. The topics included: restraints and seclusion; suicide prevention; management of hunger strikes; body searches for contraband, and medical experimentation.

44. In the case of inmates who appeared to have been injured, an investigation into the cause of the injury was initiated by correctional staff. The inmate was seen by health care providers and a standard injury assessment form was completed. In many cases physicians were asked to provide an opinion as to the nature of the injury. The training for such evaluation was a combination of medical experience gained prior to prison employment and a heightened sensitivity to the types of injury seen among inmates.

45. Mr. KOH (United States of America) said that his delegation had done their utmost to be forthright and complete in their answers. They would be happy to provide clarification of any of the responses given and to answer additional questions.

46. The CHAIRMAN, referring back to his question as to whether field officers of the Central Intelligence Agency (CIA) were trained in interrogation methods, asked what oversight mechanisms were used to ensure that, in applying such methods, the officers fulfilled their obligations under the Convention. Referring to the case of the Peruvian official Ricardo Anderson Kohatsu, he asked whether the United States had not been in breach of its obligations under the Convention. Likewise, in the case of the Haitian citizen Emmanuel Constant, the delegation had stated that the NGO involved had misinterpreted the facts. It was true that no formal extradition request had been made by Haiti, but, even without such a request a State was obliged to investigate or prosecute a person who it had reasonable grounds to believe was guilty of acts of torture. Why had the matter not been pursued further?

47. Regarding prison inmates under the age of 18 who were considered to have reached the age of majority for the purposes of punishment for serious crimes, he asked why such a stipulation was made by United States law. Lastly, could the authorities be held responsible for the conduct of private companies entrusted with the running of prisons? In the light of the various interpretations made, did the authorities consider that, in creating such entities, the United States Government believed that it was no longer responsible for the actions of those bodies?

48. Mr. EL MASRY said that, with regard to the Prison Litigation Reform Act (PLRA), it appeared that the requirement for prisoners to show physical injury before receiving damages for mental and emotional injury was not fully consistent with the obligations under the Convention. Turning to the case of the Peruvian official, he gathered that the United States had concluded that its treaty obligation to the Organization of American States (OAS) required it to release the official. On the other hand, the country's obligations under the Convention (arts. 5, 6 and 7) required that the official should remain in custody. Had those conflicting treaty obligations been discussed within the national departments concerned?

49. Mr. RASMUSSEN said that overcrowding in prisons had caused a great deal of inter-prisoner violence. What plans did the prison authorities have to reduce it? Had any possible alternatives to imprisonment been considered?

50. Mr. YU Mengjia asked whether it was possible for the delegation to provide a written copy of its responses. He also wished to draw the delegation's attention to a newspaper article, originally published in the New York Times, relating to a woman who had been handcuffed while in labour.

51. Mr. KOH (United States of America), responding to the questions raised, said that the CIA had been the subject of intensive discussion in the 1970s and 1980s. The deliberations of the Church Committee had led to the enactment in 1980 of the Intelligence Oversight Act, designed to ensure that the CIA was subject to the rule of law in the same way as all other national agencies. The overall message that his delegation had sought to convey was that the treatment of individuals in State custody was fully governed by the rule of law and pre-established procedures. Thus any covert action on the part of the intelligence agencies must be reported to an oversight committee. Similar guarantees were provided by the Internal Advisory Oversight Board and the Foreign Surveillance Intelligence Unit. Lawsuits had also been brought against officials of the CIA. In general, even though the activities of the intelligence agencies were hidden from public view, they were nevertheless subject to statutory requirements. That fact had been proved by the "Iran Contra" affair.

52. With regard to the case of Ricardo Anderson Kohatsu, the United States was a party to a broad range of international treaties pertaining to general and specific diplomatic and other immunities and to a number of bilateral agreements concerning international organizations that had their headquarters in the United States, including the OAS. When a person officially accredited under one of those agreements asserted his or her privilege in opposition to a claim entered under the provisions of the Convention against Torture, the question of which should take precedence was a debatable point. On ratifying the Convention, the United States Government had indicated that its provisions would not supersede or abrogate existing treaty obligations. However, an inter-agency working group established by the President of the United States on 10 December 1998 to consider procedures for the full implementation of human rights treaties had been addressing the issue of how conflicting obligations could be reconciled in conformity with international law and would, it was hoped, reach productive conclusions.

53. With regard to the case of Emmanuel Constant, he was extremely concerned about any allegation that a Haitian torturer was being afforded refuge in the United States. However, no valid application for his extradition had been filed. Government officials were seriously considering what kind of action could be taken to remove or deport such individuals. The extent to which the Attorney-General, possibly in conjunction with the Secretary of State, could order the removal from the United States of somebody suspected of having committed substantial human rights violations was unclear. The issue was currently the subject of three legislative proposals before the United States Congress. At all events, he vigorously denied that failure to act indicated any lack of concern on the part of the authorities.

54. There was no circumstance in which a contract establishing private prison arrangements exempted those responsible from operating within the rule of law. The suggestion that the authorities, in a move designed to tackle the problem of overcrowding, were deliberately trying to sidestep the rule of law was totally unacceptable.

55. The Prison Litigation Reform Act was a relatively new statute and was currently the subject of proceedings in United States courts. It was quite possible that those courts would interpret its provisions in different ways. A specific question still to be addressed was whether it should be construed in the light of the country's international obligations.

56. He submitted that the report concerning handcuffed women detainees published in the Chinese press demonstrated that the United States media were an important mechanism for ensuring compliance with the country's international obligations. At the same time, the media and NGOs were held to high standards of accuracy. The authorities were reluctant to assume that everything published in the New York Times was incontestably true. Allegations had to be supported by factual evidence that could be investigated by law enforcement officials.

57. Mr. YEOMANS (United States of America), responding to the question concerning the housing of minors on death row, said that a number of State legislatures, which were the main sources of criminal legislation, had ruled that certain acts were so heinous that the perpetrator should be treated as an adult. Such a determination was not automatic. The defendant was generally brought before a judge, who decided in the light of the evidence whether it was appropriate in the circumstances to treat him or her as an adult. No person under 18 years of age had ever been executed.

58. While the Prison Litigation Reform Act required inmates to provide evidence of a prior physical injury to obtain damages, it did not impair their right to take the matter to court or to obtain comprehensive injunctive relief, and it in no way restricted State remedies, which might include the possibility of monetary compensation.

59. The Civil Rights Division of the Department of Justice and the Private Plaintiffs Bar had frequently challenged prison overcrowding. Enforcement action had been sought against some 3,000 institutions across the country. In the vast majority of those cases, the relationship between overcrowding and inter-inmate violence had been recognized. The importance of keeping inmates occupied in constructive activities had also been acknowledged. There were various proposals for alternatives to imprisonment and some had been discussed by the Congress. However, the most effective response for the time being was to tackle overcrowding wherever it led to violence.

60. Mr. KOH (United States of America) said that several Supreme Court and federal cases concerning overcrowding had been cited in the report, and the Civil Rights and Institutionalized Persons Act was designed to address the issue through the statutory authorities. The National Institute of Corrections had provided assistance to State and local authorities in that regard.

61. The CHAIRMAN, reverting to the Emmanuel Constant case, said that the Committee's jurisprudence was very clear: articles 5 to 8 of the Convention imposed an obligation on States parties to assume universal jurisdiction over torturers present in their territory, whether or not a request for extradition had been filed. Did the United States consider that it did not possess jurisdiction domestically to prosecute an individual who was alleged to have committed torture overseas and for whom no request for extradition had been made?

62. Mr. KOH (United States of America) said that three legislative proposals concerning the issue of whether an alleged torturer could be taken into custody and removed from the country were currently under consideration. As to whether an alleged torturer could be prosecuted, the date on which the Convention and its implementing legislation had come into force raised the issue of ex post facto prosecution in the case of Mr. Constant.

63. The CHAIRMAN thanked the delegation for a remarkably beneficial exchange of views and invited it to return on 15 May 2000 and hear the Committee's conclusions and recommendations on the report.

64. The delegation of the United States of America withdrew.

The public part of the meeting rose at 4.45 p.m.